

 <p style="text-align: center;"><b>KENTUCKY CORRECTIONS</b> Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective by Memo Date
Authority/References	Subject	
<p>KRS 18A.045, 18A.095, 18A.138, 45.560 to 45.640, 344.010, 344.040, 344.150, 344.180, 344.200, 344.210, 8 U.S.C. § 132 A, 29 U.S.C. § 206d, 29 U.S.C. §§ 621 to 633a, 29 U.S.C. §§ 706, 791 to 795r, 38 U.S.C. §§ 4211 to 4214, 42 U.S.C. §§ 2000e to 2000e-17, 42 U.S.C. §§ 12101 to 12213, 29 C.F.R. Part 825, 101 KAR 1:375, Exec. Order 2013-841, 2008-473, Executive Branch Affirmative Action Plan (2013), P &amp; P ACA 3E-03, 3E-04 and 3E-06, ACA 2-CO-1C-09</p>	<p><b>EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCEDURE</b></p>	
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## I. DEFINITIONS

“Agency Investigator” means the person designated to assist with all EEO complaints within the Department of Corrections.

Disability is defined in KRS 344.010(4).

“Discrimination” means “unequal treatment of a class of persons”. Further, discrimination involves treating one person unfairly over another according to factors unrelated to their ability or potential.

“Equal Employment Opportunity (EEO)” means “equal access to all available jobs and training, under equal terms and conditions, and with equal benefits and services without actions, policies, or practices which differentiate among applicants or employees...” on the basis of their membership in, association or affiliation with-either real or perceived-a protected class.

"Equal Employment Opportunity Commission (EEOC)" means the federal agency that has authority to investigate and attempt conciliation of discrimination complaints.

“EEO Investigator” means the person who has received specialized training to investigate EEO complaints within the Office of the Internal Investigations Branch.

"EEO complaint" means an employee or applicant complaint that alleges discrimination in regard to race, color, religion, national origin, disability, sex, age, sexual orientation, gender identity, ancestry, political affiliation, genetic information, or veteran’s status.

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"EEO office" means the Personnel Cabinet EEO office that serves as an alternative process to handle complaints. The EEO office is one of three (3) appeal options within the first step of the EEO complaint procedure. The EEO office aids in deciding how to resolve the complaint and confers with all appropriate persons in arriving at a decision.

"Employee" for purposes of this policy only, means full-time, part-time, and interim employees of the Department of Corrections to include interns, students, volunteers, vendors, contractors, agency consultants and contract personnel.

"Formal Complaint" means a complaint expressed by an employee in writing to any member of management, a supervisor, a State EEO Coordinator, a departmental Human Resources Office, the Cabinet Human Resources Office, or the Cabinet Internal Investigations Branch (IIB). A Formal Complaint is the final step in the internal complaint process.

"Harassment" means continuous verbal or non-verbal conduct of one (1) or more employees which directly results in the inability of another employee to perform his job duties or otherwise adversely affects another employee's employment opportunities.

"Informal Complaint" means a complaint expressed by an employee either verbally or in writing to any member of management, a supervisor, a State EEO Coordinator, a departmental Human Resources Office, the Cabinet Human Resources Office, or the Cabinet Internal Investigations Branch (IIB).

"Inquiry" means a question, series of questions, or expressed observations asked by an employee to any member of management or supervisor in order to seek information regarding prohibited conduct in the workplace. It is the first major step in filing an EEO complaint.

"Kentucky Affirmative Action" means a policy designed to remedy past discrimination against minority groups, women and other members of protected classes through measures to improve their opportunities in the workplace.

"Kentucky Commission on Human Rights (KCHR)" is the state agency that investigates complaints of discrimination. An individual may obtain guidance from or file an EEO complaint with this office.

"Personnel Board" is defined in KRS 18A.045.

"Religion" is defined in KRS 344.030(7).

"Retaliation" means verbal or physical threats against the complainant or a witness or denial of an employment benefit to which the employee is entitled.

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“State EEO coordinator” means the person designated within the state Personnel Cabinet to assist with all EEO complaints received from all state agencies.

## II. POLICY and PROCEDURE

The Department of Corrections is committed to ensuring an environment free from discrimination and harassment against employees and those who conduct business with the Department. The Equal Employment Opportunity Complaint Procedure shall be established to provide a means of communication and administration for orderly and fair responses to an employee’s complaint of discrimination in regard to race, color, religion, national origin, disability, sex, age (40 or older), sexual orientation, gender identity, ancestry, political affiliation, genetic information, or veteran’s status.

Each office head, warden, division director, branch manager, and probation and parole district supervisor within the Department of Corrections shall ensure employees are informed of and provided access to the Department's EEO complaint procedures. These procedures shall not be a replacement for the normal chain of command but provide an alternative to the formal grievance procedure.

## III. EQUAL EMPLOYMENT OPPORTUNITY (EEO)/CIVIL RIGHTS COMPLAINT PROCESS FOR EMPLOYEES/CONTRACTORS

A. The internal Equal Employment Opportunity (EEO)/Civil Rights steps are inquiry, informal complaint, and formal complaint.

### 1. Inquiry

- a. An employee may approach any member of management, a supervisor, an EEO Coordinator, a departmental Human Resources Office, the Cabinet Human Resources Office, or the Cabinet Internal Investigations Branch with an inquiry.
- b. The supervisor or other recipient of the inquiry shall review this procedure with the employee initiating the inquiry and ask them to complete the EEO Complaint Form. If the complainant does not provide a completed EEO Complainant Form at the meeting, the supervisor or other recipient of the inquiry shall complete and forward the EEO Complainant Form to the Cabinet Internal Investigations Branch or the Department Human Resources Office by close of the next business day after the inquiry is initiated.

### 2. Informal Complaint

If the inquiry is determined to be in possible violation of this policy or EEO laws, the EEO Investigator or Agency Investigator shall bring the

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issue to the attention of management and the Department Human Resources Office. If the inquiry cannot be informally resolved, it shall be accepted as a formal complaint.

### 3. Formal Complaint

An employee may bypass the inquiry/informal complaint process and file a formal complaint with the Cabinet Internal Investigations Branch or the Cabinet Human Resources Office at any time. Before a formal investigation is initiated, the complainant shall complete and sign the EEO Complaint Form. The form may be emailed to [JusticeCabinetEEO@ky.gov](mailto:JusticeCabinetEEO@ky.gov), faxed to (502) 564-6686, (502) 564-0250 or mailed to the following address:

Justice and Public Safety  
Internal Investigations Branch  
Or  
Cabinet Human Resources Director  
125 Holmes Street, 2<sup>nd</sup> Floor  
Frankfort, Kentucky 40601

- B. The complainant has thirty (30) days to complete the EEO Complaint Form. Failure to return the form within thirty (30) days shall result in a closure of the complaint. The complainant may resubmit or refile the complaint at any time.
- C. For a unsubstantiated complaint, the Department Head shall issue a letter indicating the claims were not substantiated to the complainant, the accused, and the Cabinet Human Resources Director.
- D. For a substantiated complaint, the Department Head shall issue a letter indicating the claims were substantiated to the complainant, the accused, and the Cabinet Human Resources Director.
- E. Regardless of the investigation's determination (substantiated or unsubstantiated), if the Cabinet Human Resource Director or Cabinet General Counsel are notified that legal counsel represents the complainant, the letter of findings shall be sent to the complainant's counsel. The complainant or his legal counsel shall provide all necessary contact information.
- F. The Department of Corrections EEO complaint procedure is intended to give a resolving response to the complaining party within forty-five (45) calendar days or less from the date the complaint is initiated unless the complaint cannot be resolved or properly investigated within this period. Due to the nature of many EEO complaints and investigations, timeframes may require an appropriate

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extension. If an extension is determined appropriate by the EEO Investigator he shall provide written notification to the complaint and the Internal Investigations Branch Management.

- H. The Cabinet’s internal EEO/Civil Rights complaint procedures are not intended to duplicate or circumvent other available appeal options. The employee is encouraged to submit the EEO Complaint Form within three (3) to five (5) calendar days of the occurrence.

#### IV. ADDITIONAL APPEAL OPTIONS

##### A. Grievance

1. A state employee may file a grievance that alleges discrimination on the basis of race, color, national origin, sex, age (40 or older), religion, veteran status, genetic information, disability, political affiliation, sexual orientation, gender identity or ancestry or in reprisal for opposition to discriminatory practices or participation in the EEO process. The recipient of the grievance shall immediately notify the Department’s EEO Coordinator to comply with Kentucky’s Affirmative Action Plan.
2. A grievance filed alleging discrimination or sexual harassment shall be suspended and the complainant shall complete the EEO Complaint Form and submit it to the Cabinet Internal Investigations Branch or the Cabinet Human Resources Office. If the outcome of the investigation conducted by the Cabinet’s Internal Investigation Branch is unsatisfactory to the complainant, the complaint shall have to right to proceed with the grievance process outline in the Personal Cabinet’s Employee Handbook.

##### B. Appeal to the State Personnel Board

A classified or unclassified may appeal directly to the State Personnel Board an action alleged to be based on discrimination due to race, color, national origin, sex, age (40 or older), religion, veteran status, genetic information, disability, political affiliation, sexual orientation, gender identity or ancestry or in reprisal for opposition to discriminatory practices or participation in the EEO process. Deadlines for appeals to the Personnel Board are stated in KRS 18A.095.

##### C. The Office of Diversity, Equality, and Training (ODET)

ODET is the office within the Personnel Cabinet that also investigates complaints of discrimination. An employee may obtain guidance from or file an EEO complaint with this office.

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- D. An employee may participate in these procedures without fear of retaliation. The Department prohibits retaliatory action of any kind and regards such action as a separate and distinct cause for complaint. Any interference, coercion, reprisal, or other intimidation against an employee who has participated in the EEO/civil rights complaint procedures shall result in disciplinary action against the responsible individual(s).
- E. Employees may elect to file complaints directly with the federal Equal Employment Opportunity Commission (EEOC) or the Kentucky Commission on Human Rights (KCHR)

#### V. RESPONSIBILITIES OF THE DEPARTMENT AND THE CABINET

- A. Supervisors shall not request major disciplinary action against employees based on allegations raised in a complaint until the completion of the investigation. The Department Head may issue placement on special investigative leave during the investigation if deemed necessary.
- B. Cease and desist orders shall be issued by the Office of Legal Services.
- C. An employee shall not retaliate against anyone who makes a complaint or participates in an investigation as result of this policy. An employee who is found to have retaliated shall be subject to disciplinary action, up to and including dismissal.
- D. The Justice and Public Safety Cabinet and the Department of Corrections shall seek to resolve most complaints with the use of the internal EEO/Civil Rights complaint procedures. The goal of the Cabinet and Department is to investigate and stop any prohibited activity immediately so that employees shall focus their attention on their job duties.

#### VI. WITHDRAWN OF COMPLAINT

- A. A complaint may be withdrawn by contacting the Cabinet Internal Investigations Branch or the Cabinet Human Resources Office. A request for withdrawing the complaint shall be in writing and shall include the reasons for withdrawal. The Cabinet Internal Investigations Branch shall accept the request for withdrawal unless the office determines either of the following:
  1. The complainant was coerced, harassed, or compelled to withdraw the complaint; or
  2. The nature of the allegations merits further investigation.

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- B. Upon acceptance of the request to withdraw the complaint, the Cabinet Human Resources Director shall notify all relevant parties in writing of the decision to withdraw.
- C. Upon rejection of the request to withdraw the complaint, the Cabinet Human Resources Director shall notify the complainant in writing of the decision to proceed with the investigation.

**DEPARTMENT OF CORRECTIONS  
EQUAL EMPLOYMENT OPPORTUNITY  
ALLEGATION FORM**

Occurrence Date \_\_\_\_\_

Employee Name \_\_\_\_\_

Position or Title \_\_\_\_\_

Name of Location or Facility \_\_\_\_\_

Immediate Supervisor \_\_\_\_\_

Discussed with EEO Counselor within one (1) to three (3) days of occurrence

\_\_\_\_\_ YES                      \_\_\_\_\_ NO                      Date \_\_\_\_\_

EEO Complaint submitted to Department EEO Coordinator within three (3) to five (5) calendar days of occurrence

\_\_\_\_\_ YES                      \_\_\_\_\_ NO                      Date \_\_\_\_\_

STATEMENT OF DISCRIMINATORY ALLEGATION OR CHARGE

LIST STATEMENTS OF SPECIFIC DETAILS TO SUPPORT ALLEGATION OR CHARGE

\_\_\_\_\_  
Signature